

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, * Docket No. 10-CR-142

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v.

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MARY ANNE CATALANO,

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Defendant.

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TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the United States: PAUL J. CAMPANA, ESQ.

For the Defendant: RODNEY O. PERSONIUS, ESQ.

Probation Officer: DAVID BALL

Court Reporter: YVONNE M. GARRISON, RPR
Official Court Reporter
U.S.D.C., W.D.N.Y.
2 Niagara Square
Buffalo, New York 14202
716-861-7568

1 THE CLERK: Criminal Action 2010-142A, United States
2 versus Mary Anne Catalano, sentencing.

3 Counsel, please state your name and the party you
4 represent for the record.

5 MR. CAMPANA: Paul Campana for the United States.

6 MR. PERSONIUS: Your Honor, Rodney Personius for Mary
7 Anne Catalano.

8 Present also, Your Honor, just to observe today is
9 Calvin Berry who is Ms. Catalano's attorney up in Canada.

10 THE COURT: All right.

11 MR. PERSONIUS: Mr. Berry here, Your Honor.

12 MR. BERRY: Thank you.

13 THE COURT: You may be seated at the table.

14 MR. PERSONIUS: Thank you, Judge.

15 THE COURT: Are we ready?

16 MR. CAMPANA: Yes.

17 MR. PERSONIUS: Yes, Your Honor.

18 THE COURT: The defendant stands before the Court for
19 a sentencing on her previous plea of guilty to one count of
20 willfully and knowingly making a false statement in a matter
21 within the jurisdiction of the United States in violation of
22 Title 18 United States Code Section 1001(a)(2).

23 I know, Mr. Personius, you've reviewed the report,
24 and I assume you've reviewed it with your client.

25 MR. PERSONIUS: We did, Your Honor.

1 THE COURT: The Court accepts the terms and
2 conditions of the plea agreement and the plea of guilty.

3 I will now place the presentence investigation report
4 in the record under seal. If an appeal is filed, counsel on
5 appeal will be permitted access to the sealed report, except
6 that counsel on appeal will not be permitted access to the
7 recommendation section.

8 The parties have filed the appropriate statement of
9 parties with respect to sentencing factors. There's no dispute
10 about the facts contained in the report. Therefore, the Court
11 adopts these facts as its findings of fact and hereby
12 incorporates them in the record.

13 There are no objections to the probation officer's
14 conclusions as to the applicable guidelines. The report
15 recommends that the base offense level under Guideline
16 Section 2B1.1(a)(2) is 6.

17 The report also recommends a six-level upward
18 adjustment pursuant to 2B1.1(b)(1)(D), and application note
19 (3)(F)(v)(111) in a case involving a scheme in which the goods
20 for which regulatory approval by government agency was required
21 but not obtained. The loss shall include the amount paid for
22 the property, goods and services, or the goods transferred,
23 rendered or misrepresented with no credit for the value of
24 those items or services. Investigation via the payments for
25 the good services and required government regulation but did

1 not receive -- exceeded 30,000 but were less than 70,000.

2 The report also recommends a two-level downward
3 adjustment based upon the acceptance of responsibility, and
4 accordingly, recommends the offense level at 10, with a
5 criminal history category of I, with an advisory guideline
6 range of six to 12 months; an advisory range for supervised
7 release of two to three years; an advisory range for a fine is
8 2,000 to \$20,000, plus the cost of imprisonment and supervised
9 release.

10 In accordance with the Supreme Court decision U.S.
11 versus Booker and the Second Circuit decision U.S. versus
12 Crosby, this Court must consider the guidelines. It's not
13 bound by them. The Court must also consider the factors in
14 18 U.S.C. 3553(a).

15 Now, the government has moved for a downward
16 departure pursuant to 5K1.1 to a level 8. So the defendant's
17 offense level is now 8, and a sentencing range of 0 to 6
18 months.

19 Now, Mr. Campana, the 5K motion is -- your request is
20 under seal.

21 MR. CAMPANA: Yes, there's an affidavit filed under
22 seal, yes.

23 THE COURT: Yeah. And I read it over, and it's --
24 how long do you want this under seal? I really don't like to
25 put things under seal unless there's a valid reason for it.

1 And I want to know how long you feel that this thing -- this
2 affidavit should be under seal.

3 MR. CAMPANA: I think for now, Your Honor, I would
4 expect that the Court could unseal it after Dr. Galea is
5 sentenced which could be as soon as October 19th.

6 THE COURT: All right. So your request is it be
7 under seal until Dr. Galea is sentenced?

8 MR. CAMPANA: Yes.

9 THE COURT: What's your position on this,
10 Mr. Personius?

11 MR. PERSONIUS: Your Honor, I think that given the
12 fact that the government's investigation is continuing, I think
13 there's merit to Mr. Campana's request.

14 THE COURT: All right. Well, we'll seal it until
15 that time and then we'll unseal it on that day.

16 MR. CAMPANA: Thank you.

17 THE COURT: Okay. We're now at -- the government's
18 requesting a two-level departure under 5K. So we're now at
19 level 8.

20 MR. CAMPANA: Yes.

21 THE COURT: With a sentencing range of 0 to 6 months.
22 And the defendant is also eligible for a term of probation of
23 one to five years.

24 I have received, I believe it's eight letters
25 attached to your sentencing memorandum which has been filed.

1 Mr. Personius, I'll hear from you on behalf of your
2 client.

3 MR. PERSONIUS: Thank you, Your Honor.

4 Your Honor, in the submission that we filed on behalf
5 of Ms. Catalano a week ago, we placed some emphasis on a
6 description of the defendant made by Michelle Surace who is
7 Mary Anne's cousin. And she described Mary Anne as a person of
8 great integrity and commitment, and indicated that she has
9 faced the challenges of the past two years since she was
10 apprehended at the border back in September of 2009, with
11 courage, dignity and grace.

12 The reason we emphasis that in our submission and the
13 reason I repeat it today is in the two years that I've known
14 Mary Anne Catalano, as her attorney, I find that those words
15 capture the essence of the Mary Anne Catalano that I've come to
16 know.

17 I suppose that that raises the question borrowing
18 from an old pick up line of what's a nice girl like Mary Anne
19 Catalano doing in a joint like this. In other words, how did
20 she get involved in this activity with Dr. Galea.

21 As we indicate in our papers, Your Honor, Mary Anne
22 Catalano began working with Anthony Galea when she was 15 years
23 old. She was excited by the opportunity. She found Dr. Galea
24 to be a person of great charisma. And when he offered her a
25 full-time job, that, for her, was the opportunity of a

1 lifetime.

2 As time passed and she was promoted to the position
3 of his first assistant in or around 2007, the job became even
4 more interesting to her. On the one hand she was working in an
5 area that she had always enjoyed, which was athletics; she was
6 participating in the type of work that she'd always been
7 interested in; and it had an element of travel to it; and an
8 association with clientele which included many professional
9 athletes. It couldn't have been for Mary Anne more exciting,
10 Your Honor, than it was.

11 She recognizes now that she made a grave grave error.
12 She became infatuated with that position that she held, and she
13 developed an overwhelming desire to earn and maintain
14 Dr. Galea's approval.

15 That led to a --

16 THE COURT: Well, trusted him.

17 MR. PERSONIUS: She did. She did. It's not an
18 excuse for what she did.

19 THE COURT: No, I understand.

20 MR. PERSONIUS: But she did.

21 He's a very powerful personality. She was in an area
22 that she wanted to be in. She was enjoying what she was doing.
23 There was a certain prominence to it because of the type of
24 activity that was involved, but it skewed her priorities. And
25 that has led, Your Honor, as you know, to some very devastating

1 consequences.

2 She's 33 years old. She grew up in a very strict,
3 Catholic family with a loving mother and father and a loving
4 brother. She's now a convicted felon, and she will be that for
5 the rest of her life.

6 Her name will always be a footnote to a very
7 prominent criminal prosecution, both in Canada and the United
8 States. Her ability to travel in the future back to the United
9 States from Canada is in doubt. We're not saying that it's not
10 going to happen, but there's no guarantee she's going to ever
11 be able to return to the United States.

12 This prosecution for her has had some very dire
13 financial consequences as well. She immediately gave up the
14 job that she had with Dr. Galea after she was apprehended, and
15 she's had to bear the financial burden of not one, but two
16 attorneys: Me down here in Buffalo, and Mr. Calvin Berry,
17 who's here in court today, up in Canada.

18 Maybe most importantly through this, Mary Anne found
19 that she bankrupted her own ideals, the ideals that she had
20 been taught by her parents.

21 In the letter that her brother wrote to the Court, he
22 described it as the moral and ethical lens that had been
23 instilled in him and Mary Anne by their parents. She let down
24 her parents, she let down her brother, she let down her friends
25 and family, and she let down herself.

1 And as she stands her now, Your Honor, at least what
2 she can say, again, in the words of her cousin Michelle, is
3 that she's dealt with all of this with a level of courage,
4 dignity and grace.

5 When she was apprehended at the border after
6 initially telling the story that Dr. Galea had suggested that
7 she tell, she made the decision on her own, without the benefit
8 of counsel, to talk to the investigators at the border, to tell
9 them the truth, to engage in the follow-up activities that they
10 asked her to engage in. And she did so with great vigor, and I
11 guess I'd say with some level of success.

12 Since that time with the benefit of counsel, she's
13 continued her cooperation, and it's been at an extraordinary
14 level. I find it in my experience, Your Honor, to be unusual
15 that the U.S. Attorney's Office in this case, acting through
16 Mr. Campana, has gone so far as to not only recommend a
17 downward departure, but to recommend to the Court that the
18 sentence in this case entail a period of probation as opposed
19 to a period of incarceration, or as opposed to not taking a
20 position.

21 In addition to that --

22 THE COURT: That is very unusual.

23 MR. PERSONIUS: Yes, it is. The most that you
24 usually can get, Your Honor, is for the government to say, you
25 know, we won't take a position or we won't oppose probation.

1 But Mr. Campana has been gracious enough in this case to
2 specifically indicate that the U.S. Attorney's Office
3 recommends that you consider a sentence of probation.

4 THE COURT: You know, where is that?

5 MR. PERSONIUS: It's --

6 MR. CAMPANA: It's in our publicly filed motion.

7 MR. PERSONIUS: I think it's --

8 THE COURT: Okay.

9 MR. CAMPANA: It's the last paragraph of the
10 public --

11 THE COURT: Not the sealed. Right. I got it.

12 I absolutely agree with you. That is -- now, I think
13 I've seen maybe one of these ten years ago. You don't see them
14 very often.

15 MR. PERSONIUS: It is unusual, Your Honor.

16 Your Honor, immediately after being apprehended Mary
17 Anne Catalano, as of that day that she was apprehended, she
18 severed all ties with Anthony Galea. There was no nurturing
19 away from that. She stopped her contact with him, her
20 employment with him immediately.

21 Because of how troubled she was, looking back at her
22 behavior, she sought professional assistance to help her better
23 understand how she got into this situation that she did.

24 And as you can see from the seven or so letters from
25 family, friends, clergy and her employer that we've included

1 with our submission, her acceptance of responsibility in this
2 case is categorical and rises to the level, I think, of being
3 extraordinary. And what Mary Anne has done as well to
4 demonstrate her courage, dignity and grace, Your Honor, is to
5 redouble her commitment both to her family and to her faith. I
6 don't know that --

7 THE COURT: She made almost -- in a way, got so
8 involved with working that she kind of like forgot about her
9 family.

10 MR. PERSONIUS: She did.

11 THE COURT: I got that impression from reading the
12 papers.

13 MR. PERSONIUS: I think she says that, and again,
14 none of this excuses what she did. None of it takes away from
15 the seriousness of her behavior, but it's all, of course,
16 pertinent information for you to consider in the context of
17 sentencing.

18 I can say, Your Honor, that of all the many, many
19 defendants that I've ever represented, I don't know that I've
20 ever had the privilege of representing somebody that was more
21 of an exceptional human being than Mary Anne Catalano. And I
22 commend her to you for every possible consideration you feel is
23 appropriate to give her at the time you impose sentence.

24 Thank you, Judge.

25 THE COURT: Ms. Catalano.

1 Are you all right, ma'am?

2 THE DEFENDANT: I'm okay.

3 THE COURT: Do you want take a break for a few
4 minutes?

5 THE DEFENDANT: No, that's okay. I can get through
6 this.

7 Your Honor, I take full responsibility for giving a
8 false statement when entering the United States on
9 September 14th, 2009. I knew what I was doing was unlawful,
10 and I deeply regret -- I'm deeply regretful for not having used
11 better judgement.

12 I am aware that the consequences of my actions not
13 only impacted my life but many people close to me, both
14 professionally and personally.

15 Most importantly I realize the tremendous impact and
16 stress my decisions had on the lives of my family. The
17 disappointment and embarrassment that I caused them I can never
18 take away. My family has given me every opportunity to succeed
19 in my life and they have instilled in me all the values that I
20 required to become a successful, respectful and law-abiding
21 adult, but my actions almost two years ago showed no reflection
22 of their love and support.

23 It had been their continued guidance, unfailing love
24 and my faith that has given me the strength to get through this
25 time and the power to better my choices in life. I guarantee

1 that I have learned a very difficult lesson regarding my
2 priorities in life and the consequences that my actions have.

3 I promise the Court that I will never engage in
4 similar conduct in the future.

5 THE COURT: Mr. Campana.

6 MR. CAMPANA: Your Honor, Ms. Catalano's cooperation
7 was immediate, substantial and effective. We ask the Court to
8 impose sentence accordingly.

9 THE COURT: You know, sometimes imposing sentences
10 are very difficult. Probably the -- one of the most difficult
11 things a judge does. Looking over everything here, it's
12 unfortunate that we're -- this has happened. Because this is
13 not a difficult sentence for me. This is a very easy sentence.

14 Ms. Catalano cooperated almost from the get-go
15 without a lawyer. She continued to cooperate. The remorse
16 here is very substantial. I mean, this woman has suffered a
17 lot for two years. She's admitted everything she did was
18 unlawful. She apologizes to it, she's embarrassed herself, her
19 family. And it appears to me that under all the circumstances
20 here, a sentence of probation for one year is more than
21 adequate to deal with this crime.

22 As I said, this is not a difficult sentence for me.
23 It's a very easy one. I went through and read all those
24 letters from her church, from her family members, her friends,
25 and I think she suffered enough. And I hope she can pick up

1 all these pieces.

2 She's obviously reunited herself with her family.
3 She got, as you say, Mr. Personius, caught up in the whole
4 thing in dealing with well-known athletes, I guess. I guess
5 you get caught up in that sometimes.

6 She's not a kid. She's 33-year old, but you know,
7 sometimes you live in this little world and you don't see the
8 big picture and so caught up in it I think sometimes we do it.
9 We get so wrapped in what we do that we don't sometimes put
10 things in proper perspective. This is one of the easiest
11 sentences I ever had to impose.

12 During the period of probation she shall not commit
13 another federal, state or local crime. Shall be prohibited
14 from possessing a firearm or -- well, she's going to be on
15 unsupervised release or unsupervised probation because she's a
16 Canadian citizen, so there won't be any supervision in the
17 United States. And, therefore, there's no indication she's
18 ever been involved with drugs herself, and therefore, there's
19 no drug testing required.

20 As I've said, the probation will be unsupervised
21 since she is a Canadian citizen. I do not believe under all
22 the circumstances and the expense that this whole thing has
23 caused her financially -- obviously very severe -- I don't
24 believe she has the ability to pay a fine. I'm not going to
25 impose a fine, I'm going to waive it. However I will impose

1 the mandatory special assessment of \$100 and hope that that can
2 be paid forthwith, Mr. Personius.

3 MR. PERSONIUS: It will be paid today.

4 THE COURT: Get it paid, get everything to probation.

5 In determining the sentence, the Court has considered
6 the advisory range and all the points raised by counsel, as
7 well as the government's recommendation of a probationary
8 period has been discussed. That's very unusual the government
9 will recommend a probationary period. But after reading the
10 affidavit and seeing all the cooperation she's done and the
11 remorse that's here, it's evident that a probationary period at
12 the low end is the appropriate sentence.

13 I've also considered the factors in 18 U.S.C.
14 3553(a), and finds that the sentence is more than sufficient,
15 not greater than necessary to comply with the purposes of
16 sentencing set forth under 3553(a).

17 I have granted the downward departure for the reasons
18 that are stated in the government's papers.

19 And I believe this is a fair and just sentence under
20 all the circumstances.

21 Ma'am, you made a terrible decision to do what you
22 did. You paid a big price. You're going to be on federal
23 probation for a year. It's not going to be any supervision.

24 Please do not come into the United States during that
25 year, because that will be a violation of your probationary

1 period that will be restricted. She won't be able to return to
2 the United States for one year. Then she'll have to get
3 permission from the Department of Justice, I guess.

4 MR. PERSONIUS: Or Homeland Security.

5 THE COURT: Homeland Security to come back.

6 MR. PERSONIUS: Right.

7 THE COURT: That will be something she'll have to
8 work out in the future. I have nothing to say about that.

9 MR. PERSONIUS: Your Honor, that would be subject to
10 any further obligations she may have to the government
11 regarding any ongoing investigation.

12 THE COURT: Right.

13 MR. CAMPANA: Yes.

14 THE COURT: Okay. Ma'am, you have a right to appeal
15 the sentence if you feel the Court misapprehended its authority
16 or imposed an illegal sentence. However, you did waive your
17 right to appeal. If you feel that waiver is not a valid
18 waiver, you may take that issue up before the Second Circuit
19 Court of Appeals.

20 All I can tell you is that a year from now you paid
21 your price, it's a big price. Go on with your life. You've
22 got a lot going for you. You've got a great family, great
23 friends, you've got a lot of people that really care about you.
24 And I think you're going to be forever indebted to them for
25 supporting you during this period of time.

1 Good luck to you, ma'am.

2 THE DEFENDANT: Thank you.

3 THE COURT: Mr. Campana.

4 MR. CAMPANA: There's a complaint to dismiss.

5 THE COURT: Motion's granted.

6 THE PROBATION OFFICER: Your Honor, we would

7 recommend waiving the mandatory drug testing as well.

8 THE COURT: How would you like to do that?

9 THE PROBATION OFFICER: We waive, Your Honor.

10 THE COURT: Since supervision is going to be in

11 Canada.

12 THE PROBATION OFFICER: Just for the record. For the

13 record.

14 THE COURT: Unless you want me to bring her back

15 here.

16 THE PROBATION OFFICER: No, Your Honor.

17 THE COURT: We'll waive the drug testing.

18 THE PROBATION OFFICER: All right, thank you.

19 THE COURT: Anything else I should say, Mr. Ball?

20 THE PROBATION OFFICER: No, Your Honor.

21 THE COURT: The Court will be in recess.

22 MR. PERSONIUS: Thank you, Judge.

23 (Proceedings concluded at 12:25 p.m.)

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1 CERTIFICATION

2
3 I certify that the foregoing is a correct
4 transcription of the proceedings stenographically recorded by
5 me in this matter.
6
7

8 S/Yvonne M. Garrison, RPR

9 YVONNE M. GARRISON, RPR
10 Official Reporter
11 U.S.D.C., W.D.N.Y.
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